

# Courthouse News Service

## Court Shrinks From Probe of Gitmo Psychologist

By Adam Klasfeld  
April 6, 2011

MANHATTAN (CN) - New York State Supreme Court Justice Saliann Scarpulla said that she sympathized with, but is unlikely to grant, a licensed psychologist's petition to compel an investigation into another psychologist's alleged human rights abuses at Guantanamo Bay.

"My sensibility is with you," Scarpulla told the petitioner at Wednesday's unprecedented hearing. "But I don't believe the law is on your side."

In a 29-page complaint filed July 7, Steven Reisner claims John Francis Leso "developed, recommended, and implemented psychologically and physically abusive interrogation tactics during his tenure at Guantanamo in violation of New York professional standards."

The complaint states that Leso recommended the protocols used against alleged Sept. 11 co-conspirator Mohammed al-Qahtani, which Reisner says included forced hydration, induced hypothermia, 20-hour interrogations, forced nudity and religious "disgrace."

While Leso told the military base that "fear-based approaches" were "ineffective in almost all cases," he also said in "seeming contradiction" that "psychological stressors such as sleep deprivation, withholding food, isolation, and loss of time were 'extremely effective,'" the complaint states.

A month after filing the complaint, Reisner asked the American Psychological Association's ethics board to revoke Leso's license. On Nov. 24, he complained that the New York Office of Professional Discipline, through the state Education Department, and its director, Louis Catone, made an "arbitrary and capricious" decision not to investigate Leso.

The New York Attorney General's Office filed a motion to dismiss that petition on Jan. 11.

Wednesday morning's hearing over whether to compel an investigation was the first of its kind, and it filled the small courtroom with press, doctors and other observers.

During the hearing, Assistant Attorney General James Hershler argued that his office did not have jurisdiction to investigate Leso, whom he argued was not acting as a psychologist during his time at Guantanamo.

"The doctor was asked to use his expertise as a weapon," Hershler said.

Scarpulla agreed and added that an individual's moral objections to that is a matter for public policy and debate, not litigation.

"It's not my moral sense that governs," Scarpulla said. "I don't think it is my job to substitute my opinion for the disciplining board."

If the disciplinary board concluded that a rape allegation against a doctor was unfounded, Scarpulla said she would also defer to that decision.

Kathleen Roberts, an attorney from the San Francisco-based Center for Law & Accountability, said that the board would have actually conducted an investigation in that hypothetical situation. Leso never came under such scrutiny, Roberts said, despite the evidence

Reisner provided against him from the Senate Armed Services Committee Report and the log of al-Qahtani's interrogation.

Reisner has both a moral objection against Leso and a "property interest" in the value of his own psychology license, Roberts said, arguing that such value has been "diminished" by its association with Leso's abuses.

"That is so speculative," Scarpulla said, waving off the argument with her hand.

The assistant attorney general also bristled at the remark. "You haven't been harmed. ... Period," Hershler said.

He added that Leso was trying to prevent another attack like Sept. 11.

After the hearing, Roberts lamented that the argument that Leso was outside of the investigator's jurisdiction broadens "the zone of immunity and impunity for any psychologist not working in an institutional setting."

Reisner, a senior faculty member and supervisor of the International Trauma Studies Program, told reporters that the jurisdictional argument took a limited view of provider-client relationships. When psychologists work for institutions, the institution is the client, Reisner said.

"What I don't think [Scarpulla] appreciated is that medical professionals have a different set of standards," Reisner said. "It doesn't matter whether the United States brought charges [against Leso]. The issue is whether he violated ethics."

Standing next to Reisner, Allan Keller, director of Bellevue/NYU Program for Survivors of Torture, added that the jurisdictional argument "flies in the face of common sense," saying that Leso's work at Guantanamo has "everything to do with applying his expertise as a psychologist."

Keller said that New York State Assemblyman Richard Gottfried, D-Manhattan, introduced an anti-torture bill to address the "very real need to codify" investigations of psychologists who allegedly abuse their positions.

Roberts declined to speculate on how such a bill, in its final form, could affect her client's request. But she said she expects that Scarpulla will find that such an investigation is needed after reviewing the case, despite its tepid reception at the hearing.